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8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA**

11 United States of America,
12 Plaintiff,
13 v.
14 Sun State Builders, Inc.,
15 Defendant.

CONSENT DECREE

16 WHEREAS Plaintiff United States of America, on behalf of the United States
17 Environmental Protection Agency ("EPA"), has filed a Complaint initiating this action against
18 Sun State Builders, Inc. ("Sun State" or Defendant") in the United States District Court for the
19 District of Arizona requesting civil penalties and injunctive relief;

20 WHEREAS Plaintiff alleges that Sun State violated the Clean Air Act (the "Act"), 42
21 U.S.C. §§ 7401 *et seq.*, and the federally enforceable Arizona State Implementation Plan
22 ("SIP"), including Section 310 of the Maricopa County Air Quality Department ("MCAQD")
23 Regulations, by failing to implement work practices required to abate fugitive dust emissions on
24 eight separate occasions;

25 WHEREAS EPA issued two Notices of Violation ("NOVs") with respect to these
26 allegations on February 7, 2007, and January 9, 2008;

27 WHEREAS Sun State disputes the violations alleged in the NOVs and the Complaint
28 (the "Violations");

1 WHEREAS this Consent Decree does not constitute an admission of liability by Sun
2 State regarding the Violations or an admission of the factual allegations contained in the NOV's
3 or the Complaint; and

4 WHEREAS the parties have agreed that settlement of the civil judicial claims as alleged
5 in the Complaint is in the public interest and that entry of this Consent Decree without further
6 litigation is the most appropriate way to resolve this action,

7 THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED as follows:

8 I. JURISDICTION AND PARTIES BOUND

9 1. This Court has jurisdiction over the subject matter of this action and over the parties
10 pursuant to section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and
11 1355. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c) and § 1395(a), and
12 § 113(b) of the Act, 42 U.S.C. § 7413(b), because the violations that are the subject of the
13 Complaint in this action took place in Maricopa County, Arizona, and because the Defendant
14 is doing business in this District. The Complaint states a claim upon which relief may be granted
15 against Sun State pursuant to 42 U.S.C. § 7413(b). A notice of commencement of this action
16 has been given to the State of Arizona through MCAQD in accordance with section 113(b) of
17 the Act, 42 U.S.C. § 7413(b). Defendant shall not challenge entry of this Consent Decree or this
18 Court's jurisdiction to enter, enforce, modify or terminate this Consent Decree.

19 2. This Consent Decree shall apply to and be binding upon Defendant, its successors
20 and assigns. It shall also apply to and be binding upon the United States on behalf of the EPA.

21 3. If Defendant merges with or is acquired by a third party, Defendant shall attach a
22 copy of this Consent Decree to any merger or acquisition agreement and shall make performance
23 of the obligations of Defendant under this Consent Decree an obligation of the new entity, in the
24 case of a merger, or the purchaser, in the case of an acquisition. Any such merger or acquisition
25 will not relieve Defendant from the obligations of this Consent Decree. Nothing herein shall
26 preclude Defendant from allowing its successors in interest to perform Defendant's obligations
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1 under this Consent Decree. However, Defendant is ultimately responsible for full compliance
2 with the terms of this Consent Decree.

3 II. DEFINITIONS

4 4. Definitions for terms used in this Consent Decree are as follows:

- 5 a. The "Effective Date" of this Consent Decree is the date of entry of the
6 Consent Decree by the Clerk of the United States District Court for the
7 District of Arizona.
- 8 b. For purposes of this Consent Decree, "bulk materials" means any
9 material, including but not limited to, earth, rock, silt, sediment, sand,
10 gravel, soil, fill, aggregate less than 2 inches in length or diameter (i.e.,
11 aggregate base course (ABC)), dirt, mud, demolition debris, cotton, trash,
12 cinders, pumice, saw dust, feeds, grains, fertilizers, and dry concrete,
13 which are capable of producing fugitive dust.
- 14 c. For purposes of this Consent Decree, "carry-out/trackout" means any and
15 all bulk materials that adhere to and agglomerate on the exterior surfaces
16 of motor vehicles, haul trucks, and/or equipment (including tires) and that
17 have fallen onto a paved area accessible to the public.
- 18 d. For purposes of this Consent Decree, "disturbed surface area" means a
19 portion of the earth's surface (or material placed thereupon) which has
20 been physically moved, uncovered, destabilized, or otherwise modified
21 from its undisturbed native condition, thereby increasing the potential for
22 the emission of fugitive dust. An area is considered to be a disturbed
23 surface area until the activity that caused the disturbance has been
24 completed and the disturbed surface area meets the stabilization standards
25 of Section 302 of Maricopa County Air Quality Department Rule 310.
- 26 e. For purposes of this Consent Decree, "dust generating operation" means
27 any activity capable of generating fugitive dust, including but not limited
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1 to, land clearing, earth moving, weed abatement by discing or blading,
2 excavating, construction, demolition, bulk material handling, storage
3 and/or transporting operations, vehicle use and movement, the operation
4 of any outdoor equipment, or unpaved parking lots.

5 f. For purposes of this Consent Decree, "earthmoving operation" means the
6 use of any equipment for an activity which may generate fugitive dust,
7 such as but not limited to, cutting and filling, grading, leveling,
8 excavating, trenching, loading or unloading of bulk materials,
9 demolishing, blasting, drilling, adding to or removing bulk materials from
10 open storage piles, back filling, soil mulching, landfill operations, or
11 weed abatement by discing or blading.

12 g. For purposes of this Consent Decree, "fugitive dust" means the
13 particulate matter, which is not collected by a capture system, which is
14 entrained in the ambient air, and which is caused from human and/or
15 natural activities, such as but not limited to, movement of soil, vehicles,
16 equipment, blasting, and wind. Fugitive dust does not include particulate
17 matter emitted directly from the exhaust of motor vehicles and other
18 internal combustion engines, from portable brazing, soldering, or welding
19 equipment, and from piledrivers, and does not include emissions from
20 process and combustion sources that are subject to other Maricopa
21 County rules.

22 h. "Paragraph" refers to a subdivision of this Consent Decree designated by
23 an arabic numeral, including all subsections and subparagraphs.

24 i. For purposes of this Consent Decree, "work site" means any property: (1)
25 located in Maricopa County, Arizona; (2) upon which any dust
26 generating operations and/or earthmoving operations occur; and (3) for
27 which Sun State is the earthmoving/dust control permit holder.

1 III. CIVIL PENALTY

2 5. After entry of this Consent Decree and within ten days of the receipt of the electronic
3 funds transfer procedures described in Paragraph 6, Sun State shall pay a civil penalty of ONE
4 HUNDRED SIX THOUSAND DOLLARS (\$106,000) to the United States.

5 6. Sun State shall pay the civil penalty due by FedWire Electronic Funds Transfer
6 ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided
7 to Sun State following lodging of the Consent Decree by the Financial Litigation Unit of the
8 U.S. Attorney's Office for the District of Arizona, 40 North Central Avenue, Suite 1200,
9 Phoenix, Arizona 85004-4408, telephone (602) 514-7500. At the time of payment, Sun State
10 shall send a copy of the EFT authorization form and the EFT transaction record, together with
11 a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to
12 the Consent Decree in United States v. Sun State Builders, Inc., and shall reference the civil
13 action number and DOJ case number 90-5-2-1-09146, to the United States in accordance with
14 Section IX of this Consent Decree (Notification and Submittals); by email to
15 acctsreceivable.CINWD@epa.gov; and by mail to:

16 EPA Cincinnati Finance Office
17 26 Martin Luther King Drive
18 Cincinnati, Ohio 45268

18 IV. INJUNCTIVE RELIEF

19 7. In order to abate fugitive dust emissions, Sun State agrees to the following:

- 20 a. Within three months of the Effective Date of this Consent Decree, Sun
21 State shall designate a qualified dust control coordinator ("Dust Control
22 Coordinator") for each of its work sites in Maricopa County, Arizona,
23 having five acres or more of disturbed surface area at any given time. A
24 Dust Control Coordinator shall be considered qualified when he/she has:
25 (i) full authority to ensure dust control measures are implemented onsite,
26 including conducting inspections, filing required reports, deploying dust
27 suppression resources, and modifying or shutting down activities as
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1 needed to control dust; and (ii) successfully completed the training
2 required under subparagraph b. of this Paragraph. The Dust Control
3 Coordinator shall be responsible for managing dust prevention and dust
4 control on the site. A Dust Control Coordinator shall be present at all
5 times during which dust generating operations by Sun State or its
6 subcontractors, related to the purposes for which Sun State's dust control
7 permit was obtained, occur at work sites having five acres or more of
8 disturbed surface area, unless and until the area of disturbed soil becomes
9 less than five acres and the previously disturbed areas have been
10 stabilized in accordance with the requirements of MCAQD Rule 310

- 11 b. Sun State's Dust Control Coordinators shall successfully complete a
12 Comprehensive Dust Control Training Class conducted or approved by
13 MCAQD within three months of the Effective Date of this Consent
14 Decree unless such training is not offered or available within this time
15 period, in which case the course must be completed on the first occasion
16 that such training is available. Notwithstanding any other provision to
17 the contrary above, the successful completion by the Dust Control
18 Coordinators of a Comprehensive Dust Control Training Class conducted
19 or approved by MCAQD on or after March 1, 2008, shall satisfy the
20 requirements of this subparagraph b. Any Dust Control Coordinators
21 hired by Sun State after the Effective Date of this Consent Decree shall
22 successfully complete a Comprehensive Dust Control Training Class
23 conducted or approved by MCAQD within three months of the date of
24 hire unless such training is not offered or available within this time
25 period, in which case the course must be completed on the first occasion
26 that such training is available.

1 c. Sun State's current compliance coordinator, field superintendents, project
2 managers, and any other employees other than Dust Control Coordinators
3 whose job responsibilities involve dust generating operations, related to
4 the purposes for which Sun State's dust control permit was obtained, at
5 Sun State's work sites in Maricopa County, Arizona, shall successfully
6 complete a Basic Dust Control Training Class conducted or approved by
7 MCAQD within three months of the Effective Date of this Consent
8 Decree unless such training is not offered or available within this time
9 period, in which case the course must be completed on the first occasion
10 that such training is available. Notwithstanding any other provision to
11 the contrary above, the successful completion by the Sun State personnel
12 identified above of a Basic Dust Control Training Class conducted or
13 approved by MCAQD on or after March 1, 2008, shall satisfy the
14 requirements of this subsection c. In addition, any compliance
15 coordinator, field superintendents, project managers, or any other
16 employees other than Dust Control Coordinators hired by Sun State after
17 the Effective of this Consent Decree whose job responsibilities will
18 involve dust generating operations, related to the purposes for which Sun
19 State's dust control permit was obtained, at Sun State's work sites in
20 Maricopa County, Arizona, shall successfully complete a Basic Dust
21 Control Training Class conducted or approved by MCAQD within three
22 months of the date of hire unless such training is not offered or available
23 within this time period, in which case the course must be completed on
24 the first occasion that such training is available.

25 d. All current and new employees of Sun State and/or its subsidiaries who
26 are required to complete the dust control training under this Paragraph
27 must also complete a refresher Basic or Comprehensive Dust Control
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1 Training Course, as applicable, conducted or approved by MCAQD no
2 later than one year after initial training.

3 e. In any future contract with subcontractors whose job responsibilities will
4 require them to spend all or a portion of their time at Sun State's work
5 sites in Maricopa County, Arizona, Sun State shall require such
6 subcontractor(s) to comply with MCAQD Rule 310. Sun State shall also
7 inform said subcontractors of the availability of the Basic Dust Control
8 Training Class conducted or approved by MCAQD.

9 f. At the end of the six month, 12 month, and 18 month periods following
10 the Effective Date of this Consent Decree, Sun State shall submit to the
11 United States certifications in the form attached hereto as Exhibit "A"
12 that all current and new employees of Sun State who are required to have
13 dust control training as provided in this Paragraph have received such
14 training. These certifications shall list the names of all employees
15 trained, and for each such employee, the date each employee was hired
16 and the date each employee received the dust control course or refresher
17 course.

18 All obligations specified in this Paragraph shall cease 18 months after the Effective Date of this
19 Consent Decree, except to the extent otherwise required under applicable permit conditions,
20 statutes, regulations, or other applicable law.

21 V. STIPULATED PENALTIES

22 8. Except as may be excused under section VII (Force Majeure) of this Consent Decree,
23 and for a period of 18 months from the Effective Date of this Consent Decree, Sun State shall
24 be liable for stipulated penalties for failure to comply with the requirements of sections III and
25 IV of this Consent Decree as follows:

- 1 a. For failure to comply with the requirements of Paragraph 7, subparagraph
2 (a), of this Consent Decree, Sun State shall pay a stipulated penalty of
3 One Thousand Dollars (\$1,000) per day.
- 4 b. For failure to comply with the requirements of Paragraph 7,
5 subparagraphs (b) through (d), of this Consent Decree, Sun State shall
6 pay a stipulated penalty of One Thousand Dollars (\$1,000) per quarter.
- 7 c. For failure to comply with the contract requirements of Paragraph 7,
8 subparagraph (e), of this Consent Decree, Sun State shall pay a stipulated
9 penalty of Five Hundred Dollars (\$500) per occurrence.
- 10 d. For failure to timely submit a required notice under Paragraph 7,
11 subparagraph (f), of this Consent Decree, Sun State shall pay a stipulated
12 penalty of Five Hundred Dollars (\$500) per occurrence.
- 13 e. Sun State shall pay a stipulated penalty of One Thousand Dollars
14 (\$1,000) per day for failure to timely pay the civil penalty required by
15 Paragraph 5 of this Consent Decree.

16 9. All stipulated penalties shall begin to accrue on the day a violation occurs and shall
17 continue to accrue until the violation ceases. Nothing herein shall prevent the simultaneous
18 accrual of separate penalties for separate violations of this Consent Decree. Any stipulated
19 penalty accruing pursuant to this Section shall be payable on demand and due not later than 30
20 days from EPA's written demand. Stipulated penalties shall be paid by EFT pursuant to the
21 procedure specified in Paragraph 6. A transmittal letter shall accompany the payment of
22 stipulated penalties to refer to this case by name, civil action number, this Consent Decree
23 (including date of entry), and DOJ File No. 90-5-2-1-09146.

24 10. If Sun State fails to pay stipulated penalties owed pursuant to this Consent Decree
25 within 30 days of EPA's written demand, it shall pay interest on the late payment for each day
26 of late payment after the initial 30 day time period. The rate of interest shall be the most recent
27 interest rate determined pursuant to 28 U.S.C. § 1961. If Defendant disputes its obligation to
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1 pay part or all of the stipulated penalty, it shall initiate the dispute resolution procedure under
2 section VIII (Dispute Resolution) of this Consent Decree. If Defendant invokes dispute
3 resolution, Defendant shall pay the United States any amount that it does not dispute.

4 11. Payment of stipulated penalties for violation of this Consent Decree is in addition
5 to the United States' right to seek additional monetary penalties or other relief for the violations
6 for which stipulated penalties were imposed. In addition, the United States reserves its right to
7 pursue any or all relief for any or all violations outside the provisions of this Consent Decree.

8 VI. RIGHT OF ENTRY

9 12. EPA and its contractors, consultants and agents shall have authority to enter any
10 Sun State work site at all reasonable times upon proper presentation of correct credentials. This
11 provision in no way limits or otherwise affects any right of entry held by the EPA pursuant to
12 applicable federal, state or local laws, regulations and permits.

13 VII. FORCE MAJEURE

14 13. Defendant's performance of the obligations specified in Paragraph 7, subparagraphs
15 a through d of this Consent Decree may be excused or delayed to the extent, and for the period
16 of time, that such performance is prevented or delayed by events that constitute a force majeure.

17 14. For purposes of this Consent Decree, a force majeure event is defined as any event
18 arising from causes beyond the control of Defendant, including its subcontractors, and that
19 cannot be overcome by Defendant's diligent and timely efforts. Economic hardship, normal
20 inclement weather, and increased costs of performance shall not be considered events beyond
21 the reasonable control of Defendant for purposes of determining whether an event is a force
22 majeure.

23 15. In the event of a force majeure event, the time for performance of the activity
24 delayed by the force majeure event shall be extended for the time period of the delay attributable
25 to such event. The time for performance of any activity dependent on the delayed activity may
26 be similarly extended, except to the extent that the dependent activity can be implemented in a
27 shorter time. EPA shall determine whether dependent activities will be delayed by the force

1 majeure event and whether the time period should be extended for performance of such
2 activities. Defendant shall adopt all reasonable measures to avoid or minimize any delay caused
3 by a force majeure event.

4 16. When an event occurs or has occurred that may delay or prevent the performance
5 of any obligation of this Consent Decree, Defendant shall notify by telephone (415-947-4106)
6 the Chief, Air Enforcement Office, Air Division of the EPA, Region IX, within 72 hours of such
7 event. Telephone notification shall be followed by written notification to the United States
8 within seven days of such event, as provided in Section IX (Notification and Submittals) of this
9 Consent Decree. The written notification shall fully describe:

- 10 (a) the event that may delay or prevent performance;
- 11 (b) reasons for the delay, and the reasons the delay is beyond the reasonable
12 control of the Defendant;
- 13 (c) the anticipated duration of the delay;
- 14 (d) actions taken or to be taken to prevent or minimize a delay;
- 15 (e) a schedule for implementation of any measures to be taken to mitigate the
16 effect of the delay;
- 17 (f) any dependent activities and the time needed to implement any dependent
18 activities; and
- 19 (g) whether Defendant claims the event to be a force majeure event.

20 17. Defendant's failure to comply with the notice requirements provided under this
21 Section for any delay in performance will be deemed an automatic forfeiture of its right to assert
22 that the delay was caused by a force majeure event unless such failure to provide notice was
23 caused by a force majeure event.

24 18. Within seven days after receiving written notice from Defendant, EPA shall provide
25 written notification to Defendant stating whether Defendant's request for a delay is justified, and
26 whether EPA agrees that such delay was caused by a force majeure event. EPA's failure to
27 respond to a request for delay shall be deemed a denial of that request. If Defendant disagrees
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1 with EPA's determination, it may initiate dispute resolution procedures pursuant to section VIII
2 (Dispute Resolution) of this Consent Decree.

3 VIII. DISPUTE RESOLUTION

4 19. If Defendant disputes any determination made by EPA under this Consent Decree
5 related to (1) a request by EPA for stipulated penalties, (2) EPA's determination related to force
6 majeure, or (3) the termination of the Consent Decree under Paragraph 34, it shall send a written
7 notice to the United States outlining the nature of the dispute and requesting informal
8 negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond
9 15 working days from the date when the notice was sent unless the parties agree otherwise.

10 20. If the informal negotiations are unsuccessful, the determination of EPA shall
11 control, unless Defendant files a motion with this Court for dispute resolution. Any such motion
12 must be filed within 30 days after receipt by Defendant of a notice in writing from EPA
13 terminating informal negotiations and must be concurrently sent to the United States as provided
14 in Section IX (Notification and Submittals). The United States shall have 30 days to respond
15 to Defendant's motion. In any such dispute resolution proceeding, Defendant bears the burden
16 of proving, by preponderance of the evidence, that (a) with respect to disputes regarding Section
17 VII (Force Majeure), the delay was caused by circumstances beyond the reasonable control of
18 Defendant, its contractors, and agents; all reasonable measures were taken to avoid or minimize
19 delay; and the duration of the delay was reasonable under the circumstances; and (b) with respect
20 to disputes regarding termination of the Consent Decree under Paragraph 34, Defendant has
21 satisfied all of its obligations under this Consent Decree. In disputes regarding EPA's request
22 for stipulated penalties under Section V, the United States shall bear the burden of proving, by
23 preponderance of the evidence, that Defendant violated the terms and conditions of the Consent
24 Decree.

25 21. A timely motion by Defendant will not toll the accrual of stipulated penalties under
26 this Consent Decree, but payment shall be stayed pending resolution of the dispute.

1 IX. NOTIFICATION AND SUBMITTALS

2 22. Unless otherwise specified herein, all notices, written determinations, and
3 submittals required pursuant to this Consent Decree shall be transmitted via electronic or
4 overnight mail, to:

5 AS TO THE UNITED STATES OF AMERICA:

6 Director, Environmental Enforcement Section
7 United States Department of Justice
8 Environmental Enforcement Section
9 601 D Street, NW (for overnight mail)
Washington, D.C. 20044-7611
P.O. Box 7611 (for postal service)
Washington, D.C. 20004

10 Director, Air Division (AIR-1)
11 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
12 San Francisco, CA 94105
Attn: John Brock, AIR-5

13 AS TO DEFENDANT SUN STATE BUILDERS, INC.:

14 Mark T. Guerra, Esq.
15 General Counsel
Sun State Builders
16 1150 West Washington Street, Suite 120
Tempe, AZ 85281-7213

17 Except as otherwise specifically stated, all notices and submissions from Defendant to the United
18 States required under this Consent Decree shall be sent by express mail or similar overnight mail
19 delivery service, or delivered in person, not later than the day that such notification or
20 submission is required by this Consent Decree. If the due date for a notice or report falls on a
21 weekend day or federal or State of Arizona holiday, the notice or report shall be due on the next
22 working day. All notices and reports submitted to the United States shall refer to this Consent
23 Decree and the date of entry of the Consent Decree, and shall cite the case name, the case
24 number, and DOJ File No. 90-5-2-1-09146.

25 23. All submissions to the United States required under this Consent Decree shall be
26 signed and affirmed by a responsible official of the Defendant using the following certification
27 statement:

1 I certify under penalty of law that I have examined
2 and am familiar with the information submitted in
3 this document and all attachments and that, based
4 on inquiry of those individuals immediately
5 responsible for obtaining the information, I certify
6 that the information is true, accurate, and complete
7 to the best of my knowledge, information, and belief.
8 I am aware that there are significant penalties
9 for submitting false information, including
10 the possibility of fines and imprisonment.

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13 X. MISCELLANEOUS

14 24. Entry of this Consent Decree and compliance with the requirements herein shall
15 constitute full settlement and satisfaction of the civil judicial claims of the United States against
16 Defendant as alleged in the Complaint filed in this action and in the NOV's dated February 7,
17 2007, and January 9, 2008. This Consent Decree resolves only those matters specifically alleged
18 in the Complaint filed in this action and in the NOV's dated February 7, 2007, and January 9,
19 2008, through the date of lodging of this Consent Decree.

20 25. Except as specifically provided herein, the United States does not waive any rights
21 or remedies available to it for violations by Defendant of federal or state laws or regulations.
22 The United States reserves all legal and equitable remedies to enforce the provisions of this
23 Consent Decree. This Consent Decree shall in no way affect the United States' ability to bring
24 future actions for any matters not specifically alleged in the Complaint filed in this action and
25 in the NOV's dated February 7, 2007, and January 9, 2008, through the date of lodging of this
26 Consent Decree, and settled by this Consent Decree. Nothing in this Consent Decree is intended
27 to nor shall be construed to operate in any way to resolve any criminal liability of Defendant.

28 26. This Consent Decree in no way affects Defendant's responsibilities to comply with
all federal, state, or local laws and regulations.

27 27. If Sun State fails to pay on a timely basis the full amount of any penalty or interest,
28 it shall be liable for the United States' enforcement and collection expenses, including, but not
limited to, reasonable attorney fees and costs incurred by the United States for collection
proceedings.

28. The United States shall be deemed a judgment creditor for the purposes of collecting any penalties due under this Consent Decree.

29. Defendant shall not deduct the civil penalty or any stipulated penalties paid under this Consent Decree in calculating its federal income tax.

30. Each party shall bear its own costs and attorneys' fees in this action, except as otherwise provided herein.

31. This Consent Decree contains the entire agreement between the parties. This Consent Decree shall not be enlarged, modified, or altered unless such modifications are made in writing and approved by all parties and the Court.

32. The Court shall retain jurisdiction to resolve any disputes that arise under this Consent Decree.

33. Defendant agrees and acknowledges that final approval of this Consent Decree by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, opportunity for public comment for at least 30 days, and consideration by the United States of any comments prior to entry of the Consent Decree by the Court. The United States reserves its right to withdraw consent to this Consent Decree based on comments received during the public notice period. Defendant consents to entry of this Consent Decree without further notice to the Court.

XI. TERMINATION

34. This Consent Decree shall terminate according to the procedure provided in this Paragraph. After Defendant has complied with the requirements of Paragraphs 5 and 7 and Section V (Stipulated Penalties) of this Consent Decree, Defendant shall provide notice to the United States stating that Defendant has satisfied all obligations of the Consent Decree and believes the Consent Decree can be terminated. Defendant's notice shall refer to this Paragraph 34. Thereafter, the United States will provide Defendant with a written response, either stating the United States' agreement that the Consent Decree may be terminated, or stating the United

1 States' determination that the Consent Decree should not be terminated. If the United States
2 fails to provide written response within 60 days after receiving written notice from Defendant
3 or if the United States determines that the Consent Decree should not be terminated, Defendant
4 may initiate dispute resolution procedures pursuant to Section VIII (Dispute Resolution). If the
5 United States determines that the Consent Decree may be terminated, the United States shall file
6 a motion with the Court seeking termination.

7 XII. FINAL JUDGMENT

8 35. Upon entry by this Court, this Consent Decree shall constitute a final judgment for
9 purposes of Fed. R. Civ. P. 54 and 58.

10 IT IS SO ORDERED this _____ day of _____, 2008.
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14 UNITED STATES DISTRICT JUDGE
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1 **For Plaintiff United States of America:**

2 RONALD J. TENPAS
3 Acting Assistant Attorney General
4 Environment & Natural Resources Division

5 DIANE HUMETEWA
6 United States Attorney
7 District of Arizona

8 Dated: _____

9 STEVEN A. KELLER
10 Trial Attorney
11 U.S. Department of Justice
12 Environmental Enforcement Section

13 SUE A. KLEIN
14 Assistant U.S. Attorney
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Dated: _____

WAYNE NASTRI
Regional Administrator
U.S. Environmental Protection Agency,
Region IX
San Francisco, CA 94105

Dated: _____

GRANTA Y. NAKAYAMA
Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency,
Washington, D.C.

OF COUNSEL:

DAVID H. KIM
Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region IX
San Francisco, CA 94105

1 **For Defendant Sun State Builders, Inc.:**

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4 Dated: _____

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6 Dated: _____

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